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OFFICE OF PETITIONS

In re Application of :
Leventer et al. : DECISION ON PETITION
Application No. 10/625,754 :
Filed: July 23, 2003 :
Attorney Docket No. JAN-27 CON1 :

This is a decision on the petition filed May 19, 2004, requesting that the above-identified application be accorded a filing date of July 23, 2003, instead of the current filing date of April 19, 2004.

On July 23, 2003, applicants deposited the above-identified application. However, on April 1, 2004, the Office of Initial Patent Examination mailed a "Notice Of Incomplete Application" requiring drawings of applicants' invention and stating that the filing date would be the date of receipt of the omitted drawings. It is noted that the specification filed on July 23, 2003, describes drawings containing Figures 1-6, but no drawings were filed on July 23, 2003.

On April 19, 2004, in response to the Notice, applicants filed a second declaration and 6 sheets of drawings (Figures 1-6). Thereafter, the Office of Initial Patent Examination accorded the application a filing date of April 19, 2004, the date of receipt of the drawings.

On May 19, 2004, applicants filed the present petition and a \$130.00 petition fee, requesting a change in the filing date from April 19, 2004 to July 23, 2003. Applicants admitted that the application was deposited without drawings on July 23, 2003. However, Applicants asserted that the drawings did not add new matter to the application.

As stated in MPEP § 601.01(f), it is the practice of the United States Patent and Trademark Office (Office) to treat an

application that contains at least one process or method claim as an application for which a drawing is not necessary for an understanding of the invention under 35 U.S.C. 113 (first sentence).

MPEP § 601.01(f) also states that:

A nonprovisional application having at least one claim, or a provisional application having at least some disclosure, directed to the subject matter discussed above for which a drawing is usually not considered essential for a filing date, describing drawing figure(s) in the specification, but filed without drawings will be treated as an application filed without all of the drawing figures referred to in the specification as discussed in MPEP § 601.01(g), so long as the application contains something that can be construed as a written description and the names of all the inventors.

This application contains method claims. Therefore, the application should have been treated as an application filed without all of the drawing figures referred to in the specification as discussed in MPEP § 601.01(g).

MPEP § 601.01(g) states that if an application is filed without all of the drawing figure(s) referred to in the specification, a "Notice of Omitted Item(s)" is mailed indicating that the application has been accorded a filing date, but is lacking some of the figures of drawings described in the specification.

In view of the above, the requirement for drawings as set forth in the "Notice of Incomplete Application" of April 1, 2004, was mailed in error and is hereby withdrawn.

The application will be accorded a filing date of July 23, 2003, because drawings were not necessary to obtain a filing date. Accordingly, the petition is **granted**. The application will be accorded a filing date of July 23, 2003, without any drawings.

The issue of new matter is a determination for the examiner. Applicants may wish to file an amendment requesting entry of Figures 1-6.

The \$130.00 petition fee is unnecessary and will be refunded by treasury check.

The Office of Initial Patent Examination is directed to accord the above-identified application a filing date of July 23, 2003, without any drawings, and to mail a corrected filing receipt.

Any inquiries related to this decision should be directed to the undersigned at (703) 306-5589.

Christina Tartera Donnell

Christina Tartera Donnell
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